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6 CITY OF STERLING HEIGHTS  
7 GENERAL EMPLOYEES'  
8 RETIREMENT SYSTEM, Individually and  
9 on Behalf of All Others Similarly Situated,

10 No. C 14-80161 WHA

11 Plaintiffs,

12 v.  
13 PRUDENTIAL FINANCIAL, INC., *et al.*,

14 Defendants.  
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16 **ORDER GRANTING  
17 MOTION TO QUASH**

18 **INTRODUCTION**

19 In this miscellaneous action, a non-party in the underlying action moves to quash  
20 subpoenas for the production of documents and a deposition witness. For the reasons stated  
21 below, the motion is **GRANTED**.

22 **STATEMENT**

23 A putative class action alleging violations of federal securities laws is currently pending  
24 before the United States District Court for the District of New Jersey. *City of Sterling Heights*  
25 *General Employees' Retirement System v. Prudential Financial, Inc.*, No. 12-cv-05275 (D.N.J.).  
According to plaintiffs (Opp. 2):

26 In short, the complaint [in the underlying action] alleges that  
27 [defendant] Prudential, over decades, knowingly ignored  
28 policyholder deaths to avoid paying beneficiaries and escheating  
unclaimed property to the states and thereby materially  
misrepresented its financial condition, understating its reserves and  
overstating its earnings per share.

1       The action follows a 2011 multi-state “market conduct examination,” which sought to  
2 investigate whether Prudential was in violation of state claims settlement laws (O’Connell Decl.  
3 ¶ 2). The “basis for the violation” was that “insurers were using the United States Social  
4 Security Administration Death Master File (SSA-DMF) to determine when annuitants were  
5 deceased and terminating benefits” but were not “symmetrically using the SSA-DMF to  
6 determine when life insurance policyholders had died and seeking to settle life insurance claims  
7 with the deceased policyholders’ beneficiaries” (O’Connell Decl. ¶ 4). The multi-state  
8 examination was organized by the National Association of Insurance Commissioners, which is  
9 “the U.S. standard-setting and regulatory support organization created and governed by the chief  
10 insurance regulators” of the various states (O’Connell Decl. ¶ 6; Noonan Decl. ¶ 2).  
11 Pennsylvania was designated as the “managing lead state” in the multi-state examination, and  
12 was joined by California, Florida, Illinois, New Hampshire, and North Dakota (O’Connell Decl.  
13 ¶ 6).

14       As part of the examination, Prudential produced numerous documents to the examiners  
15 (O’Connell Decl. ¶ 7). Eventually, Prudential offered to enter into a settlement, which became  
16 effective on April 15, 2012 (O’Connell Decl. ¶ 9). Over fifty states and territories within the  
17 United States have joined the settlement, including California.

18       On April 3, 2014, plaintiffs served non-party California Department of Insurance  
19 (“Department”) with a document subpoena, seeking discovery related to the multi-state  
20 examination (Lew Decl., Exh. B at 12). On May 6, 2014, plaintiffs served the Department with a  
21 deposition subpoena, seeking testimony by a knowledgeable person on the same matters (Lew  
22 Decl., Exh. D). In its motion to quash, the Department claims that plaintiffs are seeking the  
23 same documents and information from Prudential itself (Br. 15). In their opposition, plaintiffs  
24 notably ignore this argument (Opp. 15–16). In addition, plaintiffs are currently pursuing the  
25 same documents and information from the Pennsylvania Insurance Department, the Florida  
26 Office of Insurance Regulation, and the California Controller (Lew Decl., Exhs. E, F, G, H, I, J  
27 & K). Plaintiffs have indicated that they may seek the same discovery from the Illinois  
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1 Department of Insurance, the New Hampshire Department of Insurance, the North Dakota  
2 Insurance Department, and dozens of other state agencies (Lew Decl., Exh. L).

3 The Department now moves to quash the subpoenas, claiming in part that plaintiffs' discovery demands are unreasonably duplicative and overly burdensome. This order follows full  
4 briefing and oral argument.

5 **ANALYSIS**

6 Under FRCP 26(b)(2)(C)(i), a court may limit discovery if "the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive." Such is the case here. The Department claims  
7 that *all* of the relevant documents and information it currently possesses were provided by  
8 Pennsylvania "in its role as managing lead state" (Br. 15; Reply Br. 12). Pennsylvania obtained  
9 the documents from Prudential. Accordingly, the Department argues that plaintiffs can obtain all  
10 of the documents and information at issue directly from Prudential or Pennsylvania. In their  
11 opposition, plaintiffs do not state whether they have received any relevant discovery from  
12 Prudential so far. As counsel for plaintiffs admitted at the motion hearing, the only evidence in  
13 the current record regarding plaintiffs' attempt to get discovery from Prudential is a single  
14 sentence in a declaration, stating, "[d]iscovery ensued thereafter" (Williams Decl. ¶ 4). This is  
15 insufficient. Moreover, plaintiffs do not identify in their opposition any documents or  
16 information that cannot be acquired directly from Prudential or any of the other individual  
17 defendants in the underlying action. Plaintiffs' fishing expedition of seeking duplicative  
18 documents and information from various state agencies across the country is not justified by the  
19 present record and is overly burdensome to the Department. Accordingly, the motion to quash is  
20 **GRANTED**. It is unnecessary to reach the further issues concerning confidentiality and privilege  
21 raised by the Department at this time.

22 **CONCLUSION**

23 For the reasons stated above, the motion to quash is **GRANTED**. If Judge Wigenton finds  
24 in the underlying action that plaintiffs are entitled to evidence but Prudential no longer has the  
25 evidence or stonewalls production of the evidence, then the Court may consider enforcing a fresh

1 subpoena (but will also then consider the Department's further concern about confidentiality).  
2 The Department should ensure that it keeps and maintains all documents relevant to the  
3 underlying action.

4 This case is over. The Clerk **SHALL CLOSE THE FILE.**

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6 **IT IS SO ORDERED.**

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8 Dated: June 19, 2014.

WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE

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